

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KLAUS HERRMANN

Application No. 09/993,176

MAILED

MAY - 5 2006

PAT & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 11, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the appeal brief filed April 7, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need

only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed April 7, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

In addition, appellant filed an amendment on April 7, 2005.

A review of the file reveals that the amendment (filed with appeal brief) was not considered by the examiner. Before further review, the examiner must consider the amendment filed April 7, 2005. Appropriate action is required.

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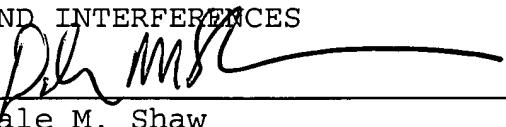
Furthermore, the examiner's answer mailed on June 28, 2005 does not comply with the headings as set forth in the new rules under 37 CFR § 41.37(c).

Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) hold the appeal brief of April 7, 2005 defective; 2) request appellant to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or to submit a statement from the examiner regarding the position taken on the missing appendices; 3) consider the amendment filed April 7, 2005; 4) vacate the examiner's answer and provide a revised examiner's answer in accordance with the new rules effective September 13, 2004 and in response to the supplemental appeal brief; and 5) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

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